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June 25, 2004

TO INTERESTED PARTIES:

RULES OF PRACTICE,  
RULES 5041, 5073, 5073.1, 5076, AND 5082.2

In Letter To Assessors 2004/030, interested parties were advised that the Board has undertaken a project to amend the State Board of Equalization Rules of Practice affecting state assessees and private railroad car companies. We invited your comments on proposed draft language for the following rules:

- Rule 5041, *Filing and Contents of Petition*
- Rule 5073, *Representation at Hearings and Powers of Attorney*
- Rule 5073.1, *Representation in Filing Petition for State Assessee and Private Railroad Car Matters* [New]
- Rule 5076, *Notice of Board Hearing; Waiver or Postponement of Hearing; Failure to Respond to Hearing Notice or to Appear for Hearing; Place of Hearing*
- Rule 5082.2, *Property Tax Petitions: Finality of Decision; Petition for Rehearing*

Enclosed is a matrix summarizing the comments received. An interested parties meeting will be held on July 15, 2004 to discuss the proposed draft language for the rules. The meeting will begin at 9:30 a.m. at the Board's headquarters in Sacramento, 450 N Street, Room 122. The rules are scheduled for the September 8, 2004 Property Tax Committee meeting.

All documents regarding this project will be posted to the Board's Web site at [www.boe.ca.gov/proptaxes/rulespract04.htm](http://www.boe.ca.gov/proptaxes/rulespract04.htm). If you plan to attend the interested parties meeting on July 15, please advise Ms. Sherrie Kinkle at [sherrie.kinkle@boe.ca.gov](mailto:sherrie.kinkle@boe.ca.gov) or (916) 322-2921.

Sincerely,

/s/ Stanley Y. Siu

Stanley Y. Siu, Chief  
Valuation Division

SYS:sk  
Enclosure

## RULES OF PRACTICE

### RULES 5041, 5073, 5073.1, 5076, and 5082.2

On May 6, 2004, Letter To Assessors 2004/030 distributed a proposed new rule and proposed revisions to the following State Board of Equalization Rules of Practice affecting state assessees and private railroad car companies:

- Rule 5041, *Filing and Contents of Petition*
- Rule 5073, *Representation at Hearings and Powers of Attorney*
- Rule 5073.1, *Representation in Filing Petition for State Assessee and Private Railroad Car Matters* [New]
- Rule 5076, *Notice of Board Hearing; Waiver or Postponement of Hearing; Failure to Respond to Hearing Notice or to Appear for Hearing; Place of Hearing*
- Rule 5082.2, *Property Tax Petitions: Finality of Decision; Petition for Rehearing*

Following are comments received on the proposed draft language for the rules.

No.	RULE	SOURCE	COMMENTS/SUGGESTIONS
1	All	Joseph A. Vinatieri? Bewley Lassleben & Miller LLP	<b>Comment:</b> As a general matter, it is important that local assessment and state assessment procedural methodologies be consistent. This has always been an aspect of proposed changes in the Property Tax Rules for board of equalization/assessment appeal board matters. We need to keep this in mind as we review the proposed changes to the SBE Rules of Practice because it appears that several of the proposed regulations would set up an asymmetry with similar rules of local appeals procedures.
2	5041(c)	Taylor Caruthers? Caruthers Valuation Group, Inc.	<b>Revise sentence:</b> "The petition shall be in writing and shall state the name of the petitioner, the petitioner's opinion of value, and the precise elements of the Board's valuation to be contested, <u>within 60 days of filing the petition</u> , and shall include petitioner's appraisal reports, financial studies and other materials relevant to value."  <b>Comment:</b> The reason for this important language is some taxpayers do not decide to file an appeal until the filing deadline is upon them. This will give the taxpayer time to gather all the necessary data to send to the Board staff.
3	5041(c)(2)	Peter W. Michaels? Cooper, White & Cooper LLP	<b>Revise sentence:</b> " ... The Board form and the petition shall be signed by the petitioner or petitioner's authorized representative and shall be addressed and <del>mailed</del> transmitted to the Chief of Board Proceedings, State Board of Equalization, at Sacramento, or shall be deposited personally at the headquarters office of the Board in Sacramento."  <b>Comment:</b> Rule 5041(c)(2) uses the word "mailed" which seems to require transmitted by U.S. Postal Service and to preclude filings via third-party couriers, such as FedEx and UPS. It is also increasingly common for courts and administrative agencies, like the SBE, to accept electronic filings.

No.	RULE	SOURCE	COMMENTS/SUGGESTIONS
4	5041(c)(2)	Eric J. Miethke? Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP	<p><b>Comment:</b> Regulation 5041(c)(2) states that findings of fact must be requested at the time the petition is filed. This is inconsistent with Revenue and Taxation Code section 744:</p> <p>"... and shall make written findings and conclusions if requested <i>at or prior to the commencement of the hearing.</i>" [Emphasis added.]</p> <p>The proposed rule should be appropriately amended, and taxpayers should also be allowed to withdraw their request for findings up to the time the findings are issued by the Board.</p>
5	5041(c)(2)	Eric J. Miethke? Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP	<p><b>Comment:</b> Subdivision (c)(2) adds a new requirement that the taxpayer file 10 copies of the petition and supporting documents. This seems excessive in my judgment, and inconsistent with other state tax filings that may be of even greater length. If the state is to force taxpayers to subsidize the state's duplication costs, that ought to come about through a statewide policy, set by the Legislature.</p>
6	5041(c)(3)	Joseph A. Vinatieri? Bewley Lasseleben & Miller LLP	<p><b>Comment:</b> It appears that it is proposed that if a petitioner does <u>not</u> request an oral hearing, the staff is excused from performing its analysis and recommendation to the Board regarding the petition. This would make the filing of a petition <u>and</u> failure to request an oral hearing a waste of time for the taxpayer. The obvious reason for the filing of the petition, including the basis for the petition, is that the taxpayer has information that might alter the staff's original assessed value. If the petitioner doesn't request an oral hearing, then the staff, the way the proposed regulation is written, has no obligation to review the petition and provide its own analysis. I am sure that is not the intent of staff in rewriting this regulation.</p>
7	5041(h)	Peter W. Michaels? Cooper, White & Cooper LLP	<p><b>Comment:</b> Proposed revisions to Rule 5041(h) empowers the Chief of Board Proceedings to grant a 15-day extension for filing materials in support of a petition. That 15-day extension period would replace a standard under current law that authorizes "[a] reasonable extension of time for filing materials." It is unclear to us whether the Chief of Board Proceedings may grant more than one 15-day extension. If so, we have no objection to a process whereby successive requests for extension must be justified and approved every 15 days. If not, we strongly object. In our view, it is in the interests of the Board and taxpayers for our mutual differences to be resolved administratively, ideally without a formal Board hearing. Toward that end, Board rules should not preclude reasonable and defensible taxpayer requests for permission to submit support documentation more than 15 days after a petition is filed.</p>
8	5073(a)	Taylor Caruthers? Caruthers Valuation Group, Inc.	<p><b>Revise sentence:</b> "Taxpayers may be represented at all levels of review by any person of the taxpayer's choosing, including, but not limited to an attorney, <u>appraiser</u> <u>[or licensed appraiser]</u>, accountant, bookkeeper, employee or business associate."</p> <p><b>Comment:</b> Most of the issues before the Board are usually appraisal related so it makes sense that appraisers should be included in this language.</p>

No.	RULE	SOURCE	COMMENTS/SUGGESTIONS
9	5073.1	Joseph A. Vinatieri? Bewley Lassleben & Miller LLP	<b>Comment:</b> Proposed Regulation 5073.1 is at odds with Property Tax Rule 305 as the proposed new regulation sets a different standard for agency authorization. Rule 305 provides that for filing an appeal there must be an agency authorization by the taxpayer unless an authorized attorney licensed to practice in California has been retained and authorized to file the application. At the time Rule 305 was rewritten, there was discussion regarding this issue and the language found in (a)(1) was agreed to by all parties. To be consistent, the same or similar language should be utilized in proposed Regulation 5073.1.
10	5073.1(b)	Eric J. Miethke? Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP	<b>Comment:</b> I see no reason why the taxpayer should be required to send a copy of the agent authorization to the Chief of the Valuation Division at the time the petition is filed. Certainly, there is no equivalent requirement with the BOE-392 Power of Attorney form. Good tax administration would suggest that rather than develop another form for property taxes, the Board should merely add a box to BOE-392, and then scan that information into a central database so that all Board employees could easily verify a representative's authority.
11	5073.1(d)	Jon A. Sperring? PriceWaterhouse Coopers	<b>Comment:</b> As proposed, Rule 5073.1 would amend the Rules of Practice to provide that the Board <b>shall</b> reject petitions filed in a state assessee or private railroad car company matter without a power of attorney. Invalidating petitions for reassessment lacking a power of attorney will hinder our ability to serve our clients. This new procedural requirement will have disastrous consequences for taxpayers as it elevates form over substance and has the potential to promote needless litigation.  Existing Rule 5073 already provides that the Board, or Board staff, may require a party to complete a Power of Attorney form, and it seems that the Board could exercise that right in a manner that did not treat taxpayers so harshly. If one is not on file, it seems that the Board could simply request a statement of authorization, and halt the proceedings until one is on file. If the request was not promptly responded to, only then would it be appropriate for the Board to consider rejecting the petition or taking other measures to limit taxpayers' rights.
12	5073.1(d)	Eric J. Miethke? Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP	<b>Comment:</b> It is overkill to reject a petition without a statement of authorization as an incomplete filing. There is no statutory authority for this draconian sanction, nor is it warranted when in fact the attorney-client relationship may already exist at the time of the filing of the petition. I suggest that the taxpayer be given a limited amount of time to correct the omission (see Property Tax Rule 305(c)(4)).

No.	RULE	SOURCE	COMMENTS/SUGGESTIONS
13	5073.1(d)	Peter W. Michaels? Cooper, White & Cooper LLP	<p><b>Comment:</b> Proposed Rule 5073.1(d) provides that "A petition filed by a tax representative without the accompanying statement of authorization, as required by subsection (b), shall be rejected by the Board Proceedings Division as an incomplete filing." That mandate is also reflected elsewhere in proposed Rule 5073.1, as well as in proposed modifications to Rule 5041(c)(2) and Rule 5073(c).</p> <p>We do not object in principle to the requirement that a statement of authorization be submitted by a state assessee in conjunction with the filing of a petition by a tax representative of the state assessee. In our view, however, it would be contrary to the underlying purpose of administrative review and excessively harsh for a petition to be rejected solely because it was not accompanied at the time of filing by a statement of authorization. The requirement contemplated would adversely affect first-time state assessees, many of whom, understandably, file imperfect business property statements and imperfect petitions for reassessment. Proposed Rule 5073.1 needlessly restricts state assessee due process rights and subordinates substance to form.</p> <p>Mindful of existing requirements that a current authorization be submitted by a taxpayer before the Board will discuss valuation of that taxpayer with a third-party tax representative, it is unclear to us why proposed Rule 5073.1(d) is necessary.</p>
14	5073.1(e)	Eric J. Miethke? Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP	<p><b>Comment:</b> I am concerned about the classification of "attorneys" as "representatives" in Regulation 5073.1(e). There is no reason to have a different rule for attorneys representing clients before the State Board of Equalization and before local Assessment Appeals Boards (AABs). An attorney representing a client before a local AAB need only list his or her State Bar registration number and attest under penalty of perjury that they are authorized to file the appeal. It was decided, wisely, that it is better to treat attorney misrepresentations as to authority to file an appeal as a professional discipline matter. It is ironic that the proposed rule sets a higher standard for filing an SBE appeal than for filing a court action.</p>
15	5082.2	Eric J. Miethke? Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP	<p><b>Comment:</b> I note that there is no statutory authority for prohibiting the Board from rehearing or reconsidering a petition. Revenue and Taxation Code section 744 only requires that decisions of the Board on petitions for reassessment of state-assessed property must be completed by December 31. Moreover, in examining Property Tax Rule 326, even a general rule prohibiting rehearing or reconsideration should have a few recognized exceptions to that rule. If nothing else, the Board should adopt that here.</p>